

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

<b>IN RE: NEW ENGLAND</b>	§	
<b>COMPOUNDING</b>	§	
<b>PHARMACY, INC. PRODUCTS</b>	§	
<b>LIABILITY LITIGATION</b>	§	<b>MDL No. 2419</b>
	§	<b>Dkt. No. 1:13-md-2419-RWZ</b>
	§	
<b>THIS DOCUMENT RELATES TO:</b>	§	
	§	
<b>Henley v. UniFirst Corporation, et al.</b>	§	
<b>Civil Action No. 14-CV-10373-RWZ</b>	§	

**DEFENDANTS ABBESELOM GHERMAY, M.D. AND DALLAS BACK PAIN  
MANAGEMENT/MOMENTUM PAIN MANAGEMENT’S MOTION TO DISMISS  
PLAINTIFF’S COMPLAINT PURSUANT TO RULE 12(b)(6)**

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants Abbeselom Ghermay, M.D. and Dallas Back Pain Management/Momentum Pain Management hereby file this their Motion to Dismiss Plaintiff’s Complaint (“Motion to Dismiss”) and respectfully request that this Court dismiss this action, including all claims against Defendants, with prejudice.

In her Complaint, Plaintiff asserts the following causes of action: (1) negligence and gross negligence; (2) violation of consumer protection statutes; (3) battery; (4) failure to warn; (5) agency; (6) civil conspiracy; and (7) punitive damages.

Under the standards of Rule 12(b)(6), Plaintiff has failed to state a claim upon which relief can be granted for any of her seven causes of action. Specifically, Plaintiff has failed to

state a claim against Defendants Abbaselom Ghermay, M.D. and Dallas Back Pain Management/Momentum Pain Management, and the conduct she alleges is not of the type contemplated by Texas Civil Practice and Remedies Code Chapter 74.

In support of the instant Motion to Dismiss, Defendants fully incorporate as if set forth at length herein their Brief in Support of Motion to Dismiss, filed today with the Court as an attachment to this Motion to Dismiss.

WHEREFORE, PREMISES CONSIDERED, Defendants Abbaselom Ghermay, M.D. and Dallas Back Pain Management/Momentum Pain Management respectfully request, pursuant to Federal Rules of Civil Procedure 12(b)(6), that this Court: (1) grant their Motion to Dismiss; (2) dismiss all of Plaintiff's claims with prejudice; (3) specifically dismiss all claims asserted against Defendants Abbaselom Ghermay, M.D. and Dallas Back Pain Management/Momentum Pain Management; (4) enter judgment in favor of Defendants Abbaselom Ghermay, M.D. and Dallas Back Pain Management/Momentum Pain Management and against Plaintiffs; (5) award costs against Plaintiff; and (6) grant such other and further relief to which Defendants are justly entitled.

Dated: June 19, 2014

Respectfully submitted,

By: /s/ Elizabeth M. Fraley  
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DALLAS BACK PAIN MANAGEMENT/  
MOMENTUM PAIN MANAGEMENT

**CERTIFICATE OF SERVICE**

I hereby certify that on June 19, 2014, I electronically filed the foregoing Motion to Dismiss with the Clerk of the Court using the ECF System for the U. S. District Court, District of Massachusetts which will send notification of such filing to all registered participants.

/s/ Elizabeth M. Fraley

Elizabeth M. Fraley

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